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2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 DARREL PATRICK WILLIS,

7 Plaintiff,

8 v.

9 NICK KISER, et al.,

10 Defendants.

CASE NO. C17-5373 BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

11 This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable J. Richard Creatura, United States Magistrate Judge, Dkt. 76, and Plaintiff Darrel Patrick Willis’s (“Willis”) objections to the R&R, Dkt. 83.

12 On December 28, 2018, Judge Creatura issued the R&R recommending that the Court grant Defendants Nick Kiser (“Kiser”) and Curtis Perry’s (“Perry”) (“Defendants”) motion for summary judgment. Dkt. 76. On February 22, 2019, Willis filed objections and conceded that his claims against Perry should be dismissed. Dkt. 83. On March 13, 2019, Kiser responded. Dkt. 84.

13 The district judge must determine de novo any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

1 In this case, Willis's objections focus on the calculation of his community custody
2 sentence and whether he admitted to smoking methamphetamine when he was arrested.
3 Judge Creatura thoroughly addressed why Willis's due process claim is barred by *Heck v.*
4 *Humphrey*, 512 U.S. 477, 487 (1994). Dkt. 76 at 8–18. In short, the claim is barred
5 because Willis failed to challenge the calculation or duration of the sentence when the
6 opportunity presented itself. Thus, Willis's arguments regarding the validity of the
7 sentence are irrelevant because the constitutional claim is barred. The Court adopts the
8 R&R on this claim.

9 Although Judge Creatura recommended granting summary judgment on Willis's
10 other claims, Willis fails to lodge any objections to this recommendation. As such, upon
11 cursory review, the Court finds no manifest error of law as to these claims.

12 Therefore, the Court having considered the R&R, Willis's objections, and the
13 remaining record, does hereby find and order as follows:

- 14 (1) The R&R is **ADOPTED**;
- 15 (2) Defendants' motion for summary judgment, Dkt. 57, is **GRANTED**;
- 16 (3) Willis's *in forma pauperis* status is **REVOKED** for purposes of appeal;
- 17 and
- 18 (4) The Clerk shall enter a JUDGMENT and close the case.

19 Dated this 15th day of May, 2019.

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22 BENJAMIN H. SETTLE
United States District Judge